

UNIT 75 DEFECTIVE PRICING

(Formerly Unit 73)

UNIT CERTIFICATION

Statement of Completion

_____ has satisfactorily completed on-the-job training in the duty or duties of this Unit under the conditions described below and in accordance with the overall standard(s) for this Unit.

Duty	Determine if pricing data were defective (e.g, not current, accurate, and/or complete) and the downward adjustment in price (if any).
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Conditions	Given a contract, a copy of the price negotiation memorandum, and results of a defective pricing audit.
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Overall Standard(s)	Correctly determine if cost or pricing data were defective and the extent to which it was relied upon. Avoid paying excessive costs due to defective pricing data.
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Evaluator

Name

Title

Date

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DOCUMENTATION OF OJT ASSIGNMENT(S)
Description of Assignment:
Evaluation:
Completion Date:

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Policies

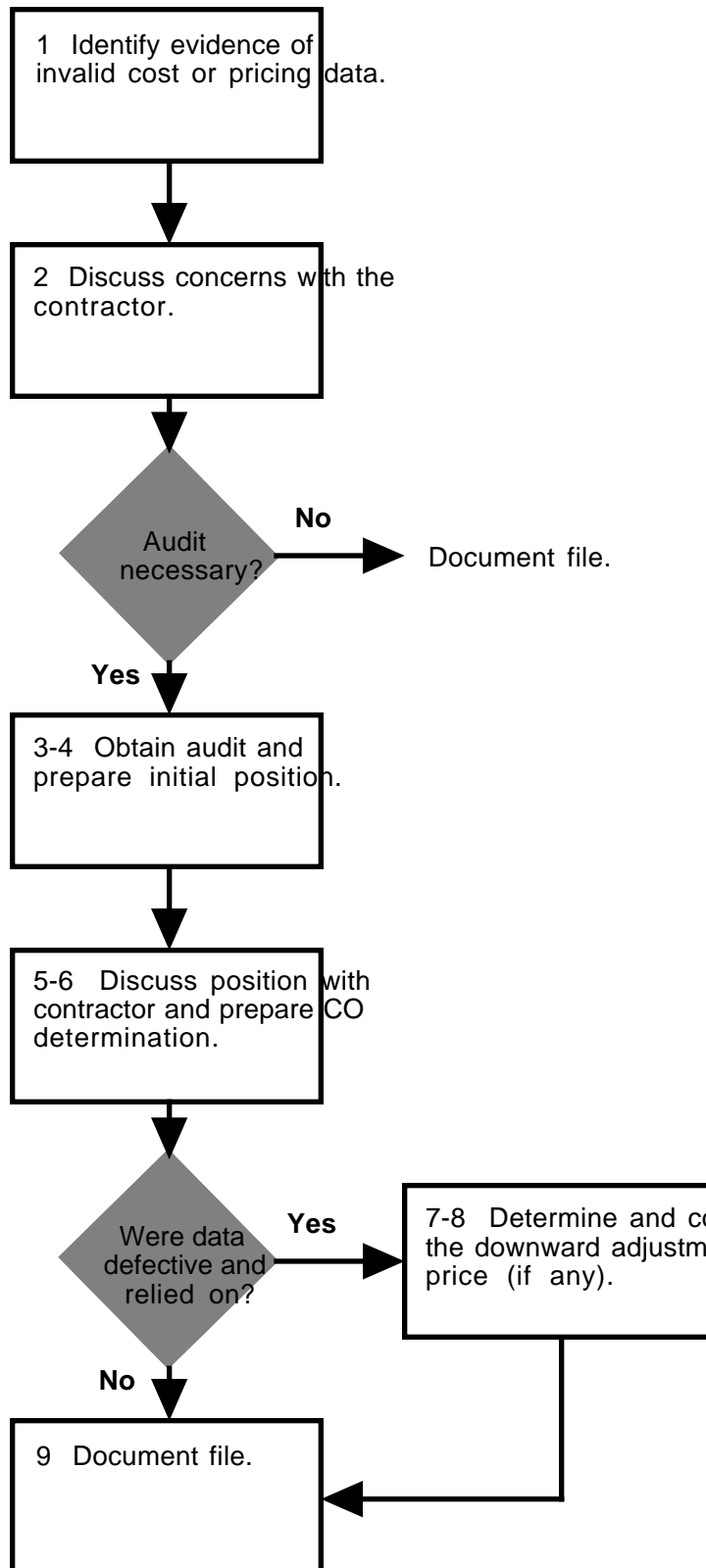
<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
15.804-7		Defective cost or pricing data.
15.813-6(e)		Defective data related to commercial pricing certificates.
52.214-26		Audit—Sealed Bidding.
52.214-27		Price reduction for defective cost or pricing data— modifications—sealed bidding.
52.215-2		Audit—Negotiation.
52.215-22		Price reduction for defective cost or pricing data.
52.215-23		Price reduction for defective cost or pricing data—modifications.
52.215-32		Certification of commercial pricing for parts or components.

Other KSA's

1. Accounting, Commercial Law, and Quantitative Analysis.
2. Ability to use the auditor's report.
3. Knowledge of how the courts and Boards of Contract Appeals have interpreted the Truth in Negotiations Act.

Other Policies and References (Annotate As Necessary):

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Tasks

Related Standards

<p>1. Identify circumstances which suggest that cost or pricing data may be invalid.</p> <ul style="list-style-type: none"> • Data presented in later negotiations with same company that are significantly different from data from earlier negotiations. • Reported incurred costs (either generally or in a particular category) that seem to be running significantly less than projected. • Data not verified sufficiently at time of negotiation (could not give auditor time needed to make a complete review prior to award or there was a long interval between completion of field review and completion of negotiations). • Data collected during market research (Unit 5) that are inconsistent with certified data from the contractor. • Previous audit reports that raise the possibility of defective pricing. • After submission of certified data from one subcontractor, work assigned to a different subcontractor. • After submission of certified data from a subcontractor, work performed in-house by the prime. 	
<p>2. Discuss concerns about the overall validity of submitted cost or pricing data, given the circumstances which have raised concern about its validity.</p> <ul style="list-style-type: none"> • Obtain contractor's position on whether the cost or pricing data are still accurate, regardless of the circumstances. • Determine if contractor's position provides a satisfactory resolution of concerns about the validity of the cost or pricing data. 	<p>2. Consider consulting the cognizant auditor informally before requesting a formal audit, to determine whether a suspicious sounding practice is nonetheless innocent.</p>
<p>3. Request and obtain an audit of cost or pricing data that are suspected of being defective.</p> <ul style="list-style-type: none"> • Receive notice of the audit and initiate tracking. 	<p>3. Do not request an audit if the contractor provides good reason to believe the data are still valid.</p>
<p>4. Prepare for discussions with the contractor.</p> <ul style="list-style-type: none"> • Review audit report. • Request and review contractor comments on any allegations of defective pricing. • Review the PNM and other documents. • Consult Government personnel who were involved in the negotiations. • Develop prenegotiation objectives. 	

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Related Standards

<p>5. Discuss alleged defective pricing with the contractor.</p> <ul style="list-style-type: none"> • Discuss findings and estimated adjustment and allow contractor to present his/her side and any supporting facts. • Find out what caused the submission of defective data and recommend corrections to the contractor. For example: <ul style="list-style-type: none"> - Better integration of accounting data in cost estimating. - Improved internal communications. - More careful review by contractor before signing certification. 	<p>5. Do not accept any defenses from the contractor that are proscribed in the applicable clause (e.g., that the contractor was a sole source supplier or otherwise was in a superior bargaining position, that the contracting officer should have known that the cost or pricing data were defective even though the contractor took no affirmative action to bring the character of the data to the contracting officer's attention, etc.).</p>
<p>6. Determine whether or not the submitted data were both defective and relied upon.</p>	
<p>7. Determine the amount (if any) of downward adjustment.</p> <ul style="list-style-type: none"> • If a decrease in one category of cost is offset by an increase in another, the adjustment is the net change (downward only) from correcting the defective data plus related indirect expenses and profit. • If there is a net increase from correcting defective data, make no change. • Calculate the interest due on any overpayments. 	<p>7. In arriving at a price adjustment, consider the time by which the cost or pricing data became reasonably available to the contractor and the extent to which the Government relied upon the defective data. When adjusting the price based on defective cost and pricing data from a subcontractor, comply with FAR 15.804-7(e).</p> <p>Allow an offset only in an amount supported by the facts and if the contractor:</p> <ul style="list-style-type: none"> • Certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested. • Proves that the cost or pricing data were available before the date of agreement on price but not submitted <p>Do not allow an offset if the understated data were not known by the contractor to be understated when the Certificate of Current Cost and Pricing Data.</p> <p>Do not allow an offset if the facts demonstrate that the price would not have increased in an amount to be offset even if the available data had been submitted before the date of agreement on price.</p> <p>Correctly apply the rules in FAR 15.804-7(b)(7) for calculating the amount of interest due the Government.</p>

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Related Standards

Penalties

\$ When determining the downward adjustment for defective cost or pricing data, all Federal agencies (not just Defense agencies) are entitled to penalty amounts on overpayments resulting from defective cost or pricing data — but only if the contractor “knowingly” submitted defective cost or pricing data. The penalty amount is equal to the amount of overpayment made. Contracting officers are required to obtain the advice of counsel before imposing a penalty (presumably to determine if the government has sufficient evidence to substantiate an allegation that the contractor “knowingly” submitted the defective data). [§15.804-7(b) and §52.215-22, FAC 90-32, Case 94-721]

\$ The FAR now defines the date of overpayment (of significance in calculating interest) on **subcontracts** — namely, “the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item”. (Case 94-721)

8. Determine the penalty (if any).	8. Correctly determine, with advice of counsel, whether the contractor “knowingly” had submitted defective data. Accurately calculate the penalty amount.
9. Obtain refunds. <ul style="list-style-type: none">• Issue a downward adjustment in price as a contract modification under the Defective Pricing clause.• If the contractor has already been paid, collect the amount owed the Government (per Unit 68).	
10. Prepare a memorandum for the file.	10. Prepare and distribute the memorandum as provided in FAR 15.804-7(d).

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Related Standards